UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,613	12/28/2001	Mark Thomson	CR1091AC	1945

22917   7590   06/27/2005

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EXAMINER
LERNER, MARTIN

ART UNIT	PAPER NUMBER
2654	

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _11 May 2005_.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1 to 8, 10, 12, and 17 to 20_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1 to 8, 10, 12, and 17 to 20_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 to 8, 10, 12, and 17 to 20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 9, 11, 13 to 18, 20, 22, and 27 to 30 of copending Application No. 09/993,207. Although the conflicting claims are not identical, they are not patentably distinct from each other because the corresponding claims set forth the same subject matter in slightly different words.

Specifically, independent claims 1, 6, and 17 of the current application and independent claims 1, 13, and 27 of the co-pending application both set forth a digital filter with filter vector input for receiving a sequence of input vectors and a predictor gain having both a current slowly evolving waveform and a previous slowly evolving waveform, a parameter estimator having an estimator vector input, a smoother module,

and a slowly evolving component encoder, wherein when said vector estimation system

receives a current input vector that is one of a sequence of input vectors, the parameter

estimator provides a current predictor gain or an observation noise variance.

This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments filed 11 May 2005 have been fully considered but they are

not persuasive.

Applicant's amendments to claims 1 to 8, 10, 12, and 17 to 20 overcome the

rejection under 35 U.S.C. §101 as being directed to non-statutory subject matter.

Applicant's arguments are persuasive with respect to the amendments to the claims as

now presenting statutory subject matter, as the limitations "from a digitized speech

signal" and "of the speech signal" provide a concrete, practical application of a

mathematical operation.

However, no terminal disclaimer was found to accompany Applicant's

Amendment filed 11 May 2005, so the obviousness double patenting rejection stands.

Applicant states in the Remarks that a terminal disclaimer is submitted, and therefore

the double patenting rejection no longer applies, but a terminal disclaimer was not filed

with the Amendment. Applicant's Transmittal Form, accompanying the Amendment of

11 May 2005, does not indicate a check box for enclosure of a terminal disclaimer. Co-

pending Application No. 09/993,207, subject of the double patenting rejection, is now

allowed. Thus, the rejection of amended claims 1 to 8, 10, 12, and 17 to 20 under the

judicially created doctrine of obviousness-type double patenting as being unpatentable

over claims 1 to 9, 11, 13 to 18, 20, 22, and 27 to 30 of copending Application No.

09/993,207 stands until a terminal disclaimer is received.

Therefore, the rejection of claims 1 to 8, 10, 12, and 17 to 20 under the judicially

created doctrine of obviousness-type double patenting as being unpatentable over

claims 1 to 9, 11, 13 to 18, 20, 22, and 27 to 30 of copending Application No.

09/993,207 is proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Martin Lerner whose telephone number is (571) 272-
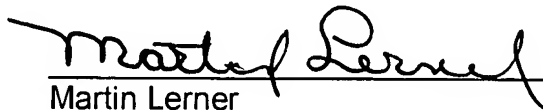
7608. The examiner can normally be reached on 8:30 AM to 6:00 PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML
6/20/05

Martin Lerner
Examiner
Group Art Unit 2654